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IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

STATE OF WISCONSIN, STATE OF MINNESOTA, STATE OF OHIO and STATE OF PENNSYLVANIA, *Complainants,* *vs.* STATE OF ILLINOIS and SANITARY DISTRICT OF CHICAGO, *Defendants.* STATE OF MISSOURI, STATE OF KENTUCKY, STATE OF TENNESSEE, STATE OF LOUISIANA, STATE OF MISSISSIPPI and STATE OF ARKANSAS, *Intervening Defendants.*	No. 7, Original.
STATE OF MICHIGAN, *Complainant,* *vs.* STATE OF ILLINOIS and SANITARY DISTRICT OF CHICAGO, *Defendants.*	No. 10, Original.
STATE OF NEW YORK, *Complainant,* *vs.* STATE OF ILLINOIS and SANITARY DISTRICT OF CHICAGO, *Defendants.*	No. 11, Original.

EXCEPTIONS AND OBJECTIONS OF DEFENDANTS THE STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO TO THE "REPORT OF THE SPECIAL MASTER ON RE-REFERENCE" FILED DECEMBER 17, 1929.

GUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

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STATE OF NEW YORK, *Complainant,* *vs.* STATE OF ILLINOIS and SANITARY DISTRICT OF CHICAGO, *Defendants.*	No. 12, Original.

EXCEPTIONS AND OBJECTIONS OF DEFENDANTS THE STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO TO THE "REPORT OF THE SPECIAL MASTER ON RE-REFERENCE" FILED DECEMBER 17, 1929.

The defendants, the State of Illinois and The Sanitary District of Chicago, object and except to the Report of the Special Master on Re-reference, filed December 17, 1929, in the following particulars and manner:

Exception Number 1: Defendants except to conclusions 4, 5, 6, 7, 8, 9, 10 and 11, as set forth on pages 141 to 144, inclusive, of the Special Master's Report.

Exception Number 2: Defendants except to the proposed form of decree as set forth on pages 146, 147, 148 and 149 of the said Special Master's Report.

Exception Number 3: Defendants except to the findings and recommendations of the Special Master because he failed to give due consideration to the fact or facts that since the offering of the evidence upon which the Special Master's original report was made, and since the date of the filing of said report, towit, November 23, 1927, upon which the Court's opinion and order of January 14, 1929, was rendered and made, the surface elevations of Lakes Michigan and Huron have risen from the then level, approximately three feet nine inches, Erie and Ontario during the said period exhibiting a corresponding relative rise in level, and that consequently interference to navigation and interference with complainants' riparian and other interests due to the diversion at Chicago from Lake Michigan to the amount fixed by the March 3, 1925, permit, do not now prevail, but on the contrary the said high lake levels have caused and are now causing and will cause damage to complainants' riparian interests, to docks, wharves, piers and other like structures, and, (according to complainants' contention as to the effect of the Chicago diversion upon lake levels), the damage caused would have been greater had such diversion not existed, and, therefore, such damage will be greater if said diversion is reduced.

Exception Number 4: In view of said high lake levels now existing and which will continue to exist for some indefinite time, the Special Master should not have given weight to his conclusion (Special Master's Report, 80) that the Court intended by its opinion of January 14, 1929, to impose upon the Sanitary District "an immediately heavy burden" in connection with the installation

of the sewage disposal works, in fixing the construction period or periods for each and all of said works; and the Special Master should have disregarded his said conclusion as to the imposition of "an immediately heavy burden" in the installation of said works, in view of said circumstances, and should have fixed much longer construction period or periods for each and all of said works, giving reasonable weight and consideration to the high lake level conditions.

Exception Number 5: Defendants except to the time fixed by the Special Master in his said report for the completion of the different sewage treatment works, and to the time fixed for the completion of all of said works, whereas the Special Master should have found the date of completion for the Southwest Side Sewage Treatment Works (as to that portion of the works to settle sewage) January 1, 1936; Calumet Sewage Treatment Works complete January 1, 1936; West Side Sewage Treatment Works complete January 1, 1941; Southwest Side Sewage Treatment Works complete January 1, 1943; all of said works complete and in practicably efficient operation January 1, 1945.

Exception Number 6: The Special Master, in fixing the time for completion of the different sewage disposal works and for the completion and placing in operation of all of said works, failed to give due consideration to necessary delays incident to carrying on a number of construction projects at the same time by one organization, and to acquiring sites for plants and rights of way through condemnation, and to delays necessarily arising in a municipal corporation raising and providing moneys as and when they are needed for construction work, because of the requirement that bond issues shall be approved by vote of the people and because of the technicalities necessarily attendant upon providing funds

from year to year under budgets which must be adopted pursuant to statutory requirements.

Exception Number 7: The Special Master failed to conclude that the fixing of the amount of diversion in the interest of navigation and its protection at the end of the construction period when all said sewage disposal works are in operation is the function of the Secretary of War on recommendation of the Chief of Engineers under the Rivers and Harbors Act of Congress of March 3, 1899, and particularly Section 10 thereof; and that for the Judicial Branch to determine the amount of such diversion would invade the jurisdiction of the Legislative and Administrative Branches of the Government contrary to the Constitution, and particularly Article I, Section 1, Article II, Section 1, and Article III, Section 1, thereof.

Exception Number 8: Defendants except to those portions of the Special Master's findings, conclusions and recommendations as to form of decree which relate to the fixing by the Court by its decree of the amount of diversion at the end of said construction period in the interest of navigation and its protection.

Exception Number 9: Defendants except to those portions of the Special Master's findings, conclusions and recommendations as to form of decree which relate to the fixing by the decree of the Court of the amount or amounts of diversion from time to time during the period of construction when the different units of the sewage treatment works go into operation; whereas the Special Master should have found that the amounts of such diversion from time to time when the said important units of said sewage treatment works go into operation should be determined and fixed by the Secretary of War on the recommendation of the Chief of Engineers in the interest of navigation and its protection.

Exception Number 10: The Special Master failed to find and conclude that the proper maintenance of that navigation in the Chicago River which passes through and along the Illinois River and/or Illinois and Michigan Canal, navigable waters of the United States, requires the diversion, after all the sewage disposal works are installed, of sufficient water from Lake Michigan to maintain the waters of said Illinois River and Illinois and Michigan Canal in a reasonably acceptable condition for navigation. (Special Master's Report, 94.)

Exception Number 11: The Special Master failed to find and conclude that after the installation of all of said sewage disposal works the annual average discharge from the Drainage Canal at Lockport (including diversion of water direct from the Lake by the Sanitary District and effluent from sewage disposal works and rainfall runoff of the Chicago and Calumet Rivers watersheds), to maintain reasonably acceptable conditions for navigation in said Illinois and Michigan Canal and Illinois River, navigable waters of the United States, was and is substantially five thousand cubic feet per second. (Special Master's Report, 94-95.)

Exception Number 12: The defendants except to the conclusion of the Special Master that after all said sewage disposal works are installed and placed in operation, only fifteen hundred cubic second feet mean annual diversion, in addition to domestic pumpage, will be required in the interest of navigation in the Chicago River as a part of the Port of Chicago, (considering only that navigation which plies in and about the Port of Chicago and the various waters thereof and enters the Chicago River from Lake Michigan or passes from the Chicago River into Lake Michigan), in that the Special Master failed to find and conclude that at least two thousand cubic feet

per second mean annual average, in addition to domestic pumpage, or one-third of one cubic foot per second for each one thousand of the population of the Sanitary District and industrial waste equivalent population, will be required in the interest of navigation under said conditions. (Special Master's Report, 131-132.)

Exception Number 13: The Special Master should have found that it is impracticable at this time to determine the amount of diversion that may be required at the end of the construction period and at various times during the construction period when the important units of the construction program go into operation in the interest of navigation and its protection, and that the Court should provide by its decree for the determination of such amounts at such times, or that the determination of such amounts at such times should be made by the Secretary of War upon the recommendation of the Chief of Engineers.

Respectfully submitted,

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